

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CARRANZA et al

Plaintiffs,

v.

WYETH LLC et al

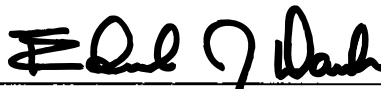
Defendants.

Case No. 5:04-CV-04161-EJD

**ORDER GRANTING LEAVE TO
FILE SECOND AMENDED
COMPLAINT**

Leave is granted for Plaintiffs to file a Second Amended Complaint attached to this
Order. On or before **July 1, 2011** the Plaintiffs shall file their Second Amended Complaint as
separate docket entry.

Dated: June 28, 2011



Honorable Edward J. Davila
United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

ESTHER CARRANZA, EMILIO
 CARRANZA

Plaintiffs,

vs.

WYETH LLC., {An indirect wholly-owned
 subsidiary of Pfizer Inc.} PHARMACIA &
 UPJOHN COMPANY LLC {An indirect
 wholly-owned subsidiary of Pfizer Inc.}

Defendants.

) Case No. 5:04-CV-04161- EJD
)
)
) SECOND AMENDED COMPLAINT
)
) 1. Negligence
) 2. Strict Liability
) 3. Breach of Implied Warranty
) 4. Breach of Express Warranty
) 5. Fraud
) 6. Violation of California Business
) & Professions Code §§ 17200 et seq.
) 7. Loss of Consortium

JURY TRIAL DEMANDED

1 **COME NOW** the plaintiffs and amend their complaint to name the defendants correctly,
2 delete the unnecessary parties and re-allege as follows:

3 1. ESTHER CARRANZA re-asserts claims for personal injury, breast cancer,
4 caused by her ingestion of combination hormone replacement medications, consisting
5 of estrogen and progestin ,including but not limited, to Prempro, Premphase, Provera
6 and Premarin (hereinafter collectively referred to as HRT.) EMILIO CARRANZA is a
7 derivative plaintiff who re-asserts his claim for loss and/or diminution of consortium.

8 2. ESTHER CARRANZA and EMILIO CARRANZA resided, purchased her
9 HRT and were injured in Monterey County which is within the Northern District of
10 California, San Jose Division. Plaintiffs filed jointly with four other plaintiffs in Carranza
11 et al v. Wyeth & Pfizer, who subsequently were severed or "dropped" and have re-filed
12 separately by ruling of Multi District Litigation, Judge Billy Roy (William R.) Wilson in
13 Little Rock, Arkansas. All cases are related and are transferred back to this court.
14 Judge Wilson also ordered that plaintiffs named herein "cure" their complaint; thus the
15 filing of this Amended Complaint.

16 3. Defendants were in the business of manufacturing, labeling, distributing,
17 marketing, advertising, promoting HRT and Plaintiffs are informed and believe they
18 conducted substantial business in California. Both Defendants sell their products in
19 Monterey County.

20 A. Defendant Pharmacia & Upjohn Company LLC is a Delaware
21 limited liability company whose sole member is Pharmacia & Upjohn LLC. The
22 sole member of Pharmacia & Upjohn LLC is Pharmacia Corporation, a Delaware
23 corporation with its principal place of business in New Jersey. Therefore,
24 Pharmacia & Upjohn Company LLC is deemed to be a citizen of both Delaware
25 and New Jersey. Pharmacia & Upjohn Company LLC manufactured brand
26 name Provera (medroxyprogesterone acetate) and other hormones. For the
27 purposes of this complaint, all of the Pharmacia & Upjohn LLC companies,
28 corporations, subsidiaries and divisions will be referred to collectively as "P&U

1 LLC." P&U LLC includes any and all franchises, partners, joint venturers,
 2 organizational units of any kind, their predecessors, their successors and assigns
 3 and their present officers, directors, employees, agents, representatives and
 4 other persons acting on their behalf, including but not limited to Pfizer Inc.

5 B. Defendant Wyeth LLC, formerly known as Wyeth Inc. is a Delaware
 6 limited liability company whose sole member is Pfizer LLC. Pfizer LLC's sole
 7 member is Pfizer Inc. Thus Wyeth LLC is an indirect wholly-owned subsidiary of
 8 Pfizer Inc. Pfizer Inc. is a Delaware Corporation with its principal place of
 9 business in New York and is deemed to be a citizen of Delaware and New York.
 10 For the purposes of this complaint, all of the Wyeth LLC companies,
 11 corporations, subsidiaries and divisions will be referred to collectively as
 12 "Wyeth." Wyeth includes any and all franchises, partners, joint venturers,
 13 organizational units of any kind, their predecessors, their successors and
 14 assigns and their present officers, directors, employees, agents,
 15 representatives and other persons acting on their behalf, including but not limited
 16 to Wyeth-Ayerst Laboratories Company; Wyeth-Ayerst Laboratories Inc. Wyeth-
 17 Ayerst Pharmaceuticals Inc., Wyeth Pharmaceuticals Inc. and Ayerst
 18 Laboratories Inc. and Pfizer Inc. At all relevant times prior to March 11, 2002,
 19 Wyeth conducted business, operated under the name and was known as
 20 American Home Products Inc.

21 JURISDICTION, VENUE & LIMITATIONS

22 4. Jurisdiction and Venue are proper as Plaintiffs lived in, obtained her
 23 prescriptions for, purchased the products and were injured in Monterey County which is
 24 within the Northern District of California, San Jose Division and there is complete
 25 diversity.

26 5. Plaintiffs timely filed their action on June 30, 2004 in Monterey County
 27 Superior Court along with two other injured women plaintiffs and their spouses. The
 28 case was removed to Federal Court on September 30, 2004; Case No: 5:04-CV-04161-

1 JW. The case was then transferred to MDL 1507 (In Re Prempro Products Liability
2 Litigation) Case No. 4:05-CV-00151 WRW on December 15, 2004. It was pending
3 there until transferred back to the United States District Court, Northern District of
4 California, San Jose Division.

5 6. The Statute of Limitations relates back to the filing of the original
6 complaint.

7 7. Jury trial is demanded on all causes of action properly brought before a
8 jury.

9
10 **I**
FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS
NEGLIGENCE

11 8. Plaintiffs incorporate by reference as if fully set forth herein, all of the
12 allegations contained in the preceding paragraphs.

13 9. Plaintiff purchased and ingested HRT, pursuant to the advice of her
14 physicians.

15 10. HRT taken by the Plaintiff was formulated, manufactured, marketed,
16 distributed, and sold by the Defendants.

17 11. The Defendants were negligent with respect to the research,
18 manufacturing, testing, warning, advertising, detailing, marketing, distributing, promoting
19 and/or selling of HRT.

20 12. As a result of the negligence of the Defendants, Plaintiff seeks recovery
21 for personal injuries, pain, suffering, disfigurement, past and future medical expenses,
22 lost wages, loss of consortium and other economic damages.

23
24 **II**
SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS
STRICT LIABILITY

25 13. Plaintiffs incorporate by reference as if fully set forth herein, all of the
26 allegations contained in the preceding paragraphs.

27 14. The Defendants sold HRT with the expectation that HRT would reach the
28 Plaintiff without substantial change in the condition in which HRT was sold, and that

1 Plaintiff would and did consume HRT without substantial change in the condition in
2 which HRT was when sold by the Defendants.

3 15. At the time of the sale or distribution of HRT, HRT was defective due to
4 inadequate instructions and warnings, and the omissions of such instructions and
5 warnings rendered HRT unreasonably dangerous and unsafe for its intended uses.
6 Defendants had a duty to warn of the heightened risks, dangers and side effects,
7 including breast cancer, as well as the lack of efficacy in deterring heart disease.
8 Defendants knew or reasonably should have known that the instructions and/or
9 warnings were inadequate.

10 16. At the time of the sale or distribution of HRT, HRT was unreasonably
11 dangerous when taking into consideration that the gravity and likelihood of severe
12 injuries from the use of HRT far outweighed any utility of HRT to the Plaintiff and the
13 public as a whole, and that the Plaintiff had no anticipated awareness of the dangerous,
14 latent and hidden defects that were inherent in HRT or that the dangers caused by HRT
15 were avoidable.

16 17. The injuries sustained by the Plaintiff were caused by the defective and
17 unreasonably dangerous condition of HRT. Had Plaintiff known of the lack of efficacy
18 and the heightened risk factors, she would not have ingested HRT and would not have
19 suffered injury and resultant damages.

20 **III**
21 **THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS**
22 **BREACH OF IMPLIED WARRANTY**

23 18. Plaintiffs incorporate by reference as if fully set forth herein, all of the
24 allegations contained in the preceding paragraphs.

25 19. The Defendants impliedly warranted to the Plaintiff that HRT was safe and
26 fit for the purposes for which they were provided.

27 20. At the time and place that Plaintiff took HRT, Plaintiff relied upon the
28 Defendants' implied warranties, not knowing what Defendant's knew, that in fact HRT
was unfit and unsafe for the purposes for which they were provided.

1 21. The Defendants' breaches of their implied warranties caused the Plaintiff's
2 injuries and resultant damages.

3
4 **IV**
5 **FOURTH CAUSE OF ACTION**
6 **BREACH OF EXPRESS WARRANTY**

7 22. Plaintiffs incorporate by reference as if fully set forth herein, all of the
8 allegations contained in the preceding paragraphs.

9 23. The Defendants expressly warranted that HRT was safe and fit for its
10 intended uses and efficacious in preventing cardiovascular disease.

11 24. The Plaintiff and her physicians relied upon the Defendants' express
12 warranties that HRT was safe and fit for such uses, when in fact it was unsafe and unfit
13 for such uses.

14 25. The Plaintiff took HRT based upon the express warranties of the
15 Defendants and in reliance upon her physicians, and as a result thereof, the Plaintiff
16 suffered injuries and resultant damages caused by HRT.

17 **V**
18 **FIFTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**
19 **FRAUD**

20 26. Plaintiffs incorporate by reference as if fully set forth herein, all of the
21 allegations contained in the preceding paragraphs.

22 27. Intentional or Negligent Misrepresentation

23 A. Defendants, Particularly Wyeth, made representations of material
24 fact including that HRT would prevent heart disease, keep women "young" and
25 did not create a higher risk of breast cancer and was good for one's overall
26 health.

27 B. Defendant Wyeth hired ghost writers to write articles signed by
28 doctors and the articles were published in magazines and journals and also
circulated to the medical community touting the efficacy and safety of HRT.

1 C. These representations were in fact false. The truth was that HRT
2 increased the risk of heart disease and stroke as well as breast cancer.

3 D. When Defendants first made these representations, Defendants
4 had no reasonable grounds for believing the representations were true and later,
5 knew they were false.

6 E. Defendants made the representations with the intent to defraud and
7 induce Plaintiff to purchase HRT. At the time Plaintiff purchased HRT, Plaintiff
8 did not know the representations were false and believed they were true. Plaintiff
9 acted in justifiable reliance upon the representations.

10 28. Concealment

11 A. Defendants, particularly Wyeth, concealed or suppressed material
12 facts regarding the dangers posed by HRT and its lack of efficacy in preventing
13 cardiovascular disease.

14 B. Defendants had a duty to disclose the material facts to the medical
15 community so that doctors could inform Plaintiff and other patients. Defendants
16 also told Doctors and Plaintiff other facts to mislead Plaintiff and prevent Plaintiff
17 from discovering the concealed or suppressed facts.

18 C. Defendants concealed or suppressed these facts with the intent to
19 defraud and induce Plaintiff to purchase HRT. At the time Plaintiff purchased
20 HRT, Plaintiff was unaware of the concealed or suppressed facts and would not
21 have ingested HRT had she known the facts.

22 As a result of the fraudulent conduct of Defendants described above, Plaintiff
23 suffered injuries caused by HRT.

24 VI
25 SIXTH CAUSE OF ACTION AGAINST ALL DEFENDANTS
26 VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS
27 CODE §§ 17200 ET SEQ .

28 29. Plaintiffs incorporate by reference as if fully set forth herein, all of the
allegations contained in the preceding paragraphs.

1 30. Defendants, particularly Wyeth, committed the following acts of unfair
2 competition, as defined by Business and Professions Code section 17200, et seq.: by
3 falsely advertising the efficacy and safety of HRT; by intentionally concealing dangerous
4 conditions of their product and by creating the fiction of a need for women to take HRT
5 as a lifetime regimen. Defendants' actions, as described above, evidence lack of good
6 faith, honesty in fact and observance of fair dealing, so as to constitute unconscionable
7 commercial practices

8 31. Defendants' acts engaged in fraudulent business practices to stimulate
9 the promotion and use of their products and gain an unfair advantage over alternative
10 treatment for menopause, if any is needed, or treatments for bone loss. As a direct and
11 proximate result of the defendants' conduct, defendants have received and continue to
12 use monies that rightfully belong to Plaintiffs and others so situated.

13 32. As a legal result of these violations of §§ 17200 et seq, Plaintiffs have
14 suffered ascertainable loss – physical injury, economic losses that include the purchase
15 price of the drug, the out-of-pocket cost of hospitalization, interim medical tests and
16 services and other costs incidental to their ingestion of a harmful and defective product
17 and loss of wages (sick time) - for which defendants, jointly and severally, are liable to
18 plaintiffs in an amount treble their actual damages and for payment of attorneys' fees
19 and costs.

20 33. Plaintiffs request the court to order Defendants to disgorge all monies
21 received from sales of HRT in California. Plaintiffs also request that the Court enjoin
22 Defendants from continuing to sell HRT in any strength, without further research and full
23 disclosure as to efficacy and safety, including black box warnings as to serious adverse
24 events. Plaintiffs request the court enjoin Defendants from selling any drugs in
25 California without full disclosure as to efficacy and safety, including black box warnings
26 as to serious adverse events

27 34. As a legal result of defendants' marketing of HRT and Plaintiff's
28 consumption thereof, Plaintiffs and others similarly situated are entitled to and request

1 that the court order medical monitoring services funded by Defendants, including but not
 2 limited to, testing, preventative screening, care and treatment of the resultant medical
 3 conditions of breast cancer, cardiovascular disease, strokes, ovarian cancer, auto-
 4 immune diseases, Alzheimer's and other latent adverse health problems associated
 5 with the use of HRT or pay money damages to cover the expenses for this monitoring
 6 and treatment.

7 **VII**
 8 **SEVENTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**
 9 **LOSS and/Or DIMINUTION OF CONSORTIUM**

10 35. Plaintiffs incorporate by reference as if fully set forth herein all of the
 11 allegations contained in the preceding paragraphs.

12 36. EMILIO CARRANZA claims that he has been harmed by the injury to his
 13 lawful wife. He suffered economic and non economic damages consisting of loss or
 14 diminution of companionship and services, including love, comfort, care, assistance,
 15 protection, affection, society, moral support and assistance in operating the household
 16 and enjoyment of sexual relations.

17 **VIII**
 18 **EXEMPLARY DAMAGES**

19 37. Defendants, through their managing agents, committed the acts alleged
 20 herein maliciously and oppressively with the wrongful intent or in conscious disregard of
 21 the likelihood of injuring Plaintiff. Defendants received information that long term use of
 22 HRT increased the likelihood of breast cancer and other injuries, but despite this
 23 information continued to intentionally falsely state that taking HRT long term was safe.
 24 Defendants failed to issue warnings until the Women's Health Initiative discontinued its
 25 study in 2002 because the incident rate of injury was so high. Even after that time,
 26 Defendants downplayed the adverse effects of HRT, misinformed doctors that the study
 27 was invalid and continued to promote HRT. Defendants did so in order to preserve the
 28

lucrative and growing market they had carefully built with deception. The failure to inform doctors and their patients was cold, callous and intentional. Defendants acted with greed and other improper and evil motives amounting to malice, and in conscious disregard of Plaintiff's rights. Because the acts taken toward Plaintiff were carried out in a despicable, deliberate, cold, callous, and intentional or grossly reckless manner with malice in order to or without regard of the likelihood that Defendants' products would injure and damage them and others, Plaintiff is entitled to recover exemplary damages from Defendants in an amount according to proof.

WHEREFORE, Plaintiffs pray for judgment as follows:

1. Economic damages according to proof;
2. Non economic damages according to proof;
3. Exemplary damages according to proof;
4. Injunctive relief pursuant to Business & Professions Code §§ 17200 et seq.;
5. Disgorgement of profits pursuant to Business & Professions Code §§ 17200 et seq.;
6. Attorneys fees and costs pursuant to Business & Professions Code §§ 17200 et seq. and as allowed by law;
7. Costs of treatment, including reimbursement to Health Insurance providers
8. Prejudgment interest and
9. Such other relief deemed just and proper by this Court.

Dated: June 14, 2011

BOURDETTE & PARTNERS

By 
Philip C. Bourdette